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July 27, 2004

The Honorable Roy Dyson  
P.O. Box 229  
Great Mills, Maryland 20634-0229

Dear Senator Dyson:

You have asked for advice concerning application of House Bill 723 (Chapter 369) of 2004, which lowered the required interest rate on security deposits from 4% to 3%. Specifically, you have asked what the effect is with respect to a security deposit originally made prior to the effective date of the act, but not returned until after the effective date of the act. You have also asked about the effect of leases which specify an interest rate of 4%. It is my view that, in the absence of a lease term, the interest rate must be calculated at 4% for six month periods that end prior to the effective date, and at 3% for any period of time after that. Where the lease specifically states that the interest rate is 4%, that rate must ordinarily be paid for any period up until the lease is altered on renewal to reflect a lower rate.<sup>1</sup>

The requirement of Real Property Article § 8-203(e)(1) that a security deposit be returned at the end of the tenancy together with simple interest less any damages rightfully withheld was originally imposed by Chapter 2 of 1973 § 4. That law set the interest at 3%, and made no provision as to the application of that requirement. Courts have split on the issue of how laws implementing interest requirements were to be applied to existing leases, *Department of Business Regulation, Division of Hotels and Restaurants v. Stein*, 326 So.2d 205 (Fla. App. 1976) (Not require interest on security deposit created under lease prior to the effective date); *People by Lefkowitz v. Parker*, 356 N.Y.S.2d 809 (N.Y. Sup. 1974) (All security deposits to be placed in interest bearing accounts regardless of time of creation), but the issue apparently did not arise in Maryland. The rate was increased from 3% to 4% by Chapter 536 of 1980. That law provided that "the change in the rate of interest shall start to accrue after July 1, 1980," which was the effective date of the bill.

Unlike the 1980 legislation, Chapter 369 of 2004 gave no indication of how the new rate was to be applied. However, in the absence of strong evidence to the contrary, it is presumed that a law of the General Assembly is to be given prospective effect. *Allstate v. Kim*, 376 Md. 276, 289 (2003); *WSSC v. Riverdale Fire Co.*, 308 Md. 556 (1987). Because the law provides that "interest shall

<sup>1</sup> An exception to this rule would be where there is evidence that the 4% provision was intended by the parties to the lease solely to reflect the current law.

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accrue at six-month intervals from the day the tenant gives the landlord the security," RP § 8-203(e)(2), interest has already accrued at the 4% for those six-month intervals that are complete prior to the effective date of the bill, and the rule that the bill is to be interpreted prospectively indicates that interest must be paid at 4% for those intervals. By the same rationale, the actual accrual is not until the end of the six month period, and thus the 3% rate would apply to those intervals ending after the effective date.

A somewhat different analysis applies in those cases where the lease specifies an interest rate of 4%. While the statute requires that the security deposit be returned with simple interest that has accrued at the rate of 3 percent per annum, it is my view that it would not prevent a landlord from agreeing to pay a greater amount. Thus, a lease term providing for 4% interest would ordinarily be binding on the parties until such time as it is changed, and interest would accrue at 4% for six-month intervals up to that point.

Sincerely,



Kathryn M. Rowe  
Assistant Attorney General

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